Supreme Court, U.S.
FILED

04 22 JUN 29 2004

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No._____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 2003

Plant Fab, Inc. and Gary Ventrella
Petitioners

v.

Crompton Mfg. Co., Inc.
Respondent

On Petition For A Writ of Certiorari To The United States Court of Appeals For The Fifth Circuit

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. When a Federal District Court complaint is expressly predicated on a request to enjoin a State Court from further proceedings because it has not ruled correctly on a collateral estoppel issue, can the issue of State Court preemption of the collateral estoppel decision ever be precluded by the Federal Judiciary for failure of the plaintiff to adequately argue the issue in the District Court?

2. May a party defendant circumvent the one-year removal prohibition of 28 U.S.C. § 1446(b) by simply filing a new complaint presenting its State Court defenses to the Federal District Court in the form of a request for a Declaratory Judgment and injunction against further State Court proceedings?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully pray that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The ruling of the United States Court of Appeal for the Fifth Circuit, affirming the ruling of the United States District Court for the Middle District of Louisiana, appears at Appendix B.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1) and Supreme Court Rule 10(c).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1254(1)
Supreme Court Rules, Rule 10(c)
28 U.S.C. § 1651
28 U.S.C. § 1332
28 U.S.C. § 1446(b)
28 U.S.C. § 2283
28 U.S.C. § 1447

CORPORATE DISCLOSURE STATEMENT

Crompton Mfg. Co., Inc., is the successor owner of Uniroyal Chemical Co., the original party defendant in this action. Plant Fab, Inc., is a wholly owned enterprise of co-petitioner Gary Ventrella.

STATEMENT OF THE CASE

A. Factual and Procedural Background

In July 1993, a tanker truck exploded in Baton Rouge, Louisiana, spilling a hazardous mixture of chemicals. Crompton Manufacturing Company, Inc. — then known as Uniroyal Chemical Company, Inc. — brought suit against various defendants to recover clean-up costs it incurred related to the accident. *Uniroyal Chem. Co. v. Deltech Corp.*, No. 93-CV-998 (M.D. La. June 23, 1997), *vacated in part*, 160 F.3d 238 (5th Cir. 1998), *modified on reh'g*, 160 F.3d 258 (5th Cir. 1999). A federal jury apportioned fault for the accident among four potentially liable parties. Crompton was found to be faultless.

On July 6, 1994, Plant Fab, Inc., and Gary Ventrella filed suit in Louisiana State Court against various defendants, including Crompton, for damage to their facility caused by the explosion. *Plant Fab, Inc. v. Uniroyal Chem. Co.*, No. 26,042 (La. 18th Jud. Dist. C., filed July 6, 1994). Plant Fab and Ventrella settled their claims with all defendants save Crompton. Crompton removed the case to Federal District Court on October 7, 2002. The District Court found that it did not have Federal Question Jurisdiction and that removal based on diversity was untimely, and, therefore, remanded the case to State Court for lack of subject-matter jurisdiction.

Also on October 7, 2002, Crompton brought suit in Federal District Court against Plant Fab and Ventrella for declaratory and injunctive relief. *Crompton Mfg. Co. v. Plant Fab, Inc.*, No. 02-947-B-M2 (M.D. La., Mar. 12, 2003). On June 17, 2003, the District Court, after finding that it had both federal-question and diversity jurisdiction over the suit, entered judgment in favor of Crompton. The District Court ruled that Plant Fab and Ventrella were collaterally estopped by the jury's liability determinations in the 1994 *Uniroyal*

suit in addition to the settlement agreement between Plant Fab, Ventrella, and the *Uniroyal* defendants, from pursuing their claims against Crompton. Therefore, the District Court permanently enjoined Plant Fab and Ventrella from continuing their State Court suit.[1]

Plant Fab and Ventrella appealed the District Court's decision to the United States Court of Appeals for the Fifth Circuit. The Court of Appeals affirmed the District Court's ruling, finding that despite the fact that the District Court had remanded the case to State Court for lack of Diversity of Citizenship Jurisdiction, it later accepted jurisdiction for purposes of issuing an injunction and declaratory judgment based on diversity and the All Writs Act (28 U.S.C. § 1651.

REASONS FOR GRANTING THE PETITION

A. Collateral Estoppel and State and Federal Comity

Pretermitting (1) lack of subject matter jurisdiction, and (2) the continuation of proceedings in a case *post-remand*, it was error as a matter of law for the District Court below to issue a preliminary [April 2, 2003], and subsequent permanent [June 17, 2003], injunction prohibiting petitioners from pursuing claims against respondent in State Court on the basis of collateral estoppel, when the

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[1] The June 17, 2003, Opinion and Order of the United States District Court for the Middle District of Louisiana, 02-947-B-M2 (M.D. La. Mar. 12, 2003) is unreported and is reproduced in the Appendix A hereto. The March 2, 2004, Opinion of the Fifth Circuit Court of Appeals is unreported and is reproduced in Appendix B. The March 31, 2004, Order of the Fifth Circuit Court of Appeals denying petitioners' timely request for rehearing and declining petitioners' suggestion of a rehearing *en banc* remains unreported.

State Court had *already rejected the plea of Federal collateral estoppel* by respondents in proceedings before it. This proposition of State Court preemption of a Federal Court's option to decide the collateral estoppel effect of its own judgments, *if it decides the issue first*, is a matter of State-Federal comity, and is mandatory under the holding of *Parsons Steel, Inc. v. First Alabama Bank*, 474 U.S. 518, 106 S.Ct. 768(1986). *See the rule set forth succinctly in* 17A Moore's Federal Practice 121.08 [5](3rd ed., 2003). *Parsons Steel, Inc.*, teaches that a disappointed advocate of either offensive or defensive collateral estoppel must appeal the decision in the *State* judicial system in this context, not run to Federal Court for a ruling essentially reversing a State District Court.

How is it procedurally possible for a United States District Court, basing its jurisdiction on Diversity of Citizenship [28 U.S.C. § 1332], to predicate the granting of a declaratory judgment and permanent injunction prohibiting petitioners from pursuing claims against respondents in Louisiana State Court, when the *same* District Court had previously found that neither Diversity of Citizenship nor Federal Question Jurisdiction existed for removal purposes between the *same* parties seeking the *same* relief?

Federal Courts are Courts of limited jurisdiction. Suspecting that its Removal Petition would be rejected on grounds of the one-year bar imposed by 28 U.S.C. § 1446(b), when respondent improvidently removed petitioners' Louisiana State Court suit to Federal Court, on October 7, 2002, respondent also filed a separate complaint for Declaratory Judgment presenting a collateral-estoppel defense that had already been considered and rejected in State Court. Respondent requested that all further State Court proceedings against it be enjoined.

On January 13, 2003, a United State Magistrate Judge found that there was neither Federal Question nor Diversity of Citizenship Jurisdiction in the case, and recommended that the removed case be

remanded to State District Court. There was no Federal Question Jurisdiction as alleged, because neither the Anti-Injunction Act [28 U.S.C. § 2283], nor the All Writs Act [28 U.S.C. § 1651] provide independent grounds for Federal subject matter jurisdiction. *Newby v. Enron Corp.*, 302 F.3d 295, 300-303 (5th Cir., 2002); *see also*, 17A Moore's Federal Practice 121.11 (3rd ed., 2003). This was definitively settled in *Syngenta Crop Protection, Inc. v. Henson*, 123 S.Ct. 366, 154 L.Ed.2d 368 (2002). There was no proper Diversity of Citizenship Jurisdiction for removal purposes because of the one-year time bar of 28 U.S.C. § 1446(b).

The District Court not only followed the United States Magistrate Judge's suggestion, remanding the removed case back to Louisiana State Court[2], but in the case appealed from the District Court noted that the improvidently removed case had just been remanded *"for lack of subject matter jurisdiction"* [Rp.108, note 3], and *"based on a recent United States Supreme Court decision entitled Syngenta Crop Protection, Inc. v. Henson, 123 S.Ct. 366, 154 L.Ed.2d 368 (2002)"* [*Id.*, note 10].

However, the same District Court proceeded to grant a permanent injunction against petitioners on collateral estoppel grounds, finding: *"[t]his Court has jurisdiction over this matter pursuant to 28 U.S.C.§1332* [i.e., Diversity of Citizenship Jurisdiction] *and, 28 U.S.C.§ 1651(a)* [i.e., the All Writs Act] which empowers a federal court to issue any orders necessary in aid of its jurisdiction ...." Rp.124. As to Federal Question Jurisdiction, the District Court's decision was clearly error, not only because it had just remanded the companion suit between the same parties due to lack of Federal Question Jurisdiction, but also because the case the Court cited in so doing [*Syngenta Crop Protection, Inc. v. Henson,*

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[2] *Plant Fab, Inc., et al v. Uniroyal Chemical, et al,* 02-CV-944 (M.D.La. 2002) [*Unreported*].

123 S.Ct. 366, 154 L.Ed.2d 368 (2002)] expressly held the All Writs Act does **not** give rise to independent subject matter jurisdiction.

As to the District Court's pronouncement that it had "*jurisdiction over this matter pursuant to 28 U.S.C. § 1332*" [Rp.124], the same District Court had just ordered the removed action remanded to State Court based on the following finding:

> Defendant Uniroyal has not shown that this case was timely removed, on the basis of diversity jurisdiction, within one year after the state court petition for damages was filed. Nor has it shown that there are any equitable considerations which support imposing on the plaintiffs a waiver of the one year limitation on removal found in section 1446(b). *Plant Fab, Inc., et al versus Uniroyal Chemical, et al,* 02-CV-944 (M.D.La. 2002) [*Unreported*].

While Diversity of Citizenship Jurisdiction may have in fact existed at the time the complaint was inittally filed, to allow a party to circumvent the delay penalty of 28 U.S.C. § 1446(b) by simply filing a new complaint for a declaratory judgment, after improvidently removing the case from State Court, would render the statutory prohibition and the intention of Congress to further limit Diversity of Citizenship Jurisdiction, nugatory.

The Fifth Circuit Court of Appeals held "[I]f the requirements of Section 1332 are met, the district court has subject matter jurisdiction, and (of course) Section 1332 has no exception for cases where the party failed to timely remove a similar state-court case." *Crompton Mfg. Co., Inc. v. Plant Fab, Inc.*, 03-30668 (5th Cir. 2004), page 8, note 3. (Appendix B, hereto.)

The separate complaint for declaratory judgment and injunctive relief specifically alleged that the State Court had rejected

its collateral-estoppel defenses, and respondent filed a transcript of the State Court proceedings into the record. This timing sequence should have been absolutely fatal to respondent's claim for collateral estoppel under any circumstances in a Federal forum based on full faith and credit, and comity for State Court decisions. *Parsons Steel, Inc. v. First Alabama Bank*, 474 U.S. 518, 106 S.Ct. 768 (1986). The Fifth Circuit Court of Appeals found that the issue of State Court preemption over the doctrine of collateral estoppel had not been sufficiently raised in Federal District Court, and petitioners were estopped from requesting review of the issue of State Court preemption on appeal.

B. Loophold in the One-Year Time Limit

When Congress amended 28 U.S.C. § 1446(b) a decade ago to include the prohibition that cases becoming "removable" during their pendency "may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action," presumably the intent was to further limit access to the Federal Courts through the Diversity of Citizenship grant. Whether this prohibition on removal can be circumvented by a defendant in State Court simply filing a collateral Federal complaint asking for both a declaratory judgment on its State Court defenses, and injunctive relief prohibiting the State Court suit from proceeding, is highly problematic. It appears that the intent of Congress would be frustrated thereby.

The matter is further complicated by the issue of preemptive State Court resolution of a defendant's claim of Federal collateral estoppel. 17A Moore's Federal Practice 121.08[5](3rd Cir., 2003) succinctly states the rule set down by this Court in *Parsons Steel, Inc. v. First Alabama Bank*, 474 U.S. 518, 106 S.Ct. 768 (1986):

> The relitigation exception permits federal injunction of state proceedings only when the state court has not yet ruled on the merits of the **res judicata** defense. Once a litigant raises and the state court determines the **res judicata** effect of a federal judgment, that judgment binds the federal courts. Thus, timing considerations are particularly important when seeking injunctive relief against state judicial proceedings under the anti-injunction Act's re-litigation exception. Although a litigant might obtain an injunction of repetitive state court proceedings while the proceedings are pending, once the state court determines not to give preclusive effect to a federal judgment the federal court is bound by the state court's determination. The party denied preclusive effect must appeal the preclusion decision in the state court. [Citations omitted.]

This Petition asks the Court to correct this apparent loophole in the one-year time limit for removals based on Diversity of Citizenship Jurisdiction, by jurisprudentially holding that a party defendant is estopped from claiming Federal District Court relief in the form of a complaint for declaratory judgment on State Court defenses when a removal to Federal Court of the case collaterally attacked would otherwise be untimely. Moreover, this Petition asks the Court to enforce its holding in *Parsons Steel, Inc. v. First Alabama Bank*, 474 U.S. 518, 106 S.Ct. 768 (1986), by holding that a complaint for injunctive relief explicitly seeking to mitigate against a State Court adverse ruling on the issue of collateral estoppel *ipso facto* is subject to State Court preemption.

It was error as a matter of law for the District Court below to predicate the granting of a declaratory judgment and permanent

injunction prohibiting petitioners from pursuing claims against respondents in Louisiana State Court on the existence of Diversity of Citizenship and Federal Question Jurisdiction *via* the All Writs Act, when the *same* District Court had previously and properly found that neither Diversity of Citizenship nor Federal Question Jurisdiction existed for removal purposes between the *same* parties seeking the *same* relief. Contrary to the decision of the Federal District Court, the All Writs Act does not give rise to Federal Question Jurisdiction. *Syngenta Crop Protection, Inc. v. Henson*, 123 S.Ct. 366, 154 L.Ed. 2d 368 (2000). Moreover, the remand of *Plant Fab, Inc., et. al. v. Uniroyal Chemical, et. al.*, 02-CV-944 (M.D. La. 2002) [Unreported] was *definitive as to lack of Diversity of Citizenship Jurisdiction.*

Retroactive cures of jurisdictional effects are not permitted in other contexts. *See, Brooks v. Rosiere*, 585 F.Supp. 351 (E.D. La. 1984). The District Court's 28 U.S.C. § 1447 remand to State Court of a *first-filed* action between the *same* parties based on the *same* theories posed by the removing defendant on February 28, 2003, in *Plant Fab, Inc. v. Uniroyal Chemical, et al.*, Civil Action No. 02-CV-944 (M.D. La. 2002) [*Unreported*] was definitive as to the issue of lack of subject matter jurisdiction, and non-reviewable pursuant to 28 U.S.C. § 1447(d), either by appeal or "otherwise" by recourse to a separately filed suit for declaratory judgment on respondent's defenses and request for injunctive relief. Respondent's complaint appealed from was simply a restatement of its defenses (already rejected) in State Court, and it is error as a matter of law to partially remand a controversy and retain, in the Federal forum, "defenses" of one of the parties to litigate. *Hickey v. Duffy*, 827 F.2d 234 (7th Cir. 1987); *see also*, 17A Moore's Federal Practice 121.06[2][B] (3rd ed., 2003) [" The anti-injunction exception for removal cases applies only so long as the Federal court maintains jurisdiction. The power to enjoin the State court proceedings ends if the Federal court remands the case . . . ."].

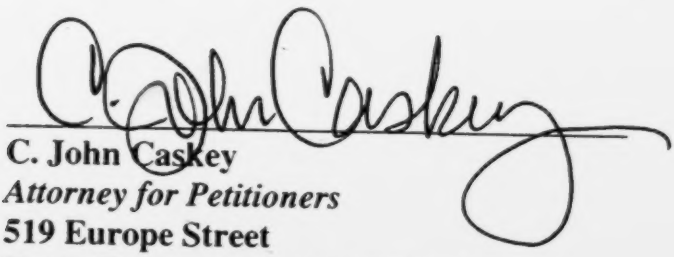
CONCLUSION

State Court preemption of a Federal Court's option to decide the collateral estoppel effect of its own judgments, *if it decides the issue first*, is a matter of State-Federal comity, and is mandatory under the holding of *Parsons Steel, Inc. v. First Alabama Bank*, 474 U.S. 518, 106 S.Ct. 768(1986).

The one-year timeliness requirement for removals under 28 U.S.C. § 1446(b) cannot be rendered meaningless by a defendant's recourse to filing a separate suit for a Declaratory Judgment on the same issues and with the same parties as are involved in the non-removable State Court action.

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted:



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Date: June 29, 2004

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CROMPTON MANUFACTURING
COMPANY, INC. CIVIL ACTION NO. 02-947-B-M2

VERSUS

PLANT FAB, INC. AND GARY
VENTRELLA

RULING ON PERMANENT INJUNCTION AND REQUEST FOR DECLARATORY JUDGMENT

For the reasons set forth below and in the ruling of March 11, 2003,

The Court finds, pursuant to Fed. R. Civ. Proc. Rule 65 and 28 U.S.C. §§ 1651 and 2283, that Plant Fab, Inc. and Gary Ventrella, together with their officers, agents, servants, employees, attorneys, and persons in active concert or participation with them, should be permanently enjoined from taking any steps in any forum to further or prosecute their claims against Crompton Manufacturing Company, Inc. or Uniroyal Chemical Company (now known as Crompton Manufacturing Company, Inc.) (hereinafter referred to as "Crompton") which were asserted (or could have been asserted) by them arising out of the transaction or occurrence at issue in the state court action entitled *Plant Fab, Inc. and Gary Ventrella v. Uniroyal Chemical Company, Inc.*, et al, Suit No. 26,042, Division D, on the docket for the 18th Judicial District Court for the Parish of West Baton Rouge, State of Louisiana, (hereinafter referred to as "the State Court Action"). The Court further finds, pursuant to Fed. R. Civ. Proc. Rule 57 and 28 U.S.C. § 2201, that judgment should be entered in favor of Crompton declaring that the final judgment entered in

Uniroyal Chemical Company v. Deltech Corp., et. al., Civil Action No. 93-998 bars the claims of Plant Fab, Inc. ("Plant Fab") and Gary Ventrella in the State Court Action.

Procedural History

This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332 and, 28 U.S.C. § 1651(a) which empowers a federal court to issue any order necessary in aid of its jurisdiction, including issuing injunctions to protect and enforce its prior judgments, prevent relitigation of issues resolved by the Court's prior judgments, "secure or preserve the fruits and advantages of a judgment or decree" rendered by the Court.[1]

On March 11, 2003, this Court issued a ruling and supporting reasons finding that Crompton's motion for preliminary injunction should be granted.[2] The Court entered a preliminary injunction on April 2, 2003, subject to Crompton posting a $1,000 cash bond.[3] Crompton posted the required bond on April 10, 2003.

On June 12, 2003, the Court conducted a status conference. At the conference, the parties stipulated that the evidence to be submitted on the merits of the declaratory judgment action (and the request for permanent injunction) was the same as the evidence submitted in resolution of Crompton's motion for preliminary injunction and that no further proceedings were required prior to entry of a final judgment on the merits in accordance with the Court's prior rulings. (*See*, Fed. R. Civ. Proc. Rule 65(a)(2)0.

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[1] *Royal Ins. Co. of America v. Quinn-L Capital Corp.*, 960 F.2d 1286, 1293 (5thCir. 1992).

[2] Rec. Doc. No. 13. (*See*, procedural history set forth therein).

[3] Rec. Doc. No. 16.

Merits

The Court finds that the standards for issuing an injunction are met in this case.[4] The requirement of irreparable harm is met here in that "costly and time-consuming relitigation of claims and issues is threatened"[5] and this injunction will prevent needless litigation. This harm outweighs any harm posed to Plant Fab or Ventrella by the granting of this injunction. Further, the injunction is in the public interest, and issuance of it does not violate the Anti-Injunction Statute (28 U.S.C. § 2283).

After careful consideration of the entire record, including conferences with counsel for the parties on November 4, 2002, and June 12, 2003, and a hearing on Plaintiff's motion for preliminary injunction on December 18, 2002, the Court has found, consistent with prior written reasons issued on March 11, 2003, that the permanent injunction should issue.

Rendered this 17th day of June, 2003, Baton Rouge, Louisiana.

/s/ Frank J. Polozola
FRANK J. POLOZOLA, CHIEF JUDGE
MIDDLE DISTRICT OF LOUISIANA

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[4] *S2ee, ICEE Distributors, Inc. v. J&J Snack Foods Corp.*, 325 F.3d 586, 597 n. 33 (5th Cir. 2003), *citing Univ. of Tex. V. Camenisch*, 451 U.S. 390, 392, 101 S.Ct. 1830, 68 L.Ed.2d 175 (1981); *Amoco Prod. Co. v. Village of Gambell*, 480 U.S. 531, 546 n. 12, 107 S.Ct as for a permanent injunction with the exception that the plaintiff must show a likelihood of success on the merits rather than actual success").

[5] 18 James Wm. Moore, *et al.*, Moore's Federal Practice § 131.53 [I][b] 93d ed. 1997) *citing Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 506-507, 79 S.Ct. 948, 3 L.Ed. 2d 988 (1959) and *Quintero v. Klaveness Ship Lines*, 914 F.2d 717, 720-721 (5th Cir. 1990), *reh. Den'd*, 920 F.2d 931 (5th Cir. 1990), *cert. Den'd* 499 U.S. 925, 111 S.Ct. 1322, 113 L.Ed. 2d 255 (1991). *See also*, 13 James Wm. Moore, *et al*, Moore's Federal Practice § 65.22 [I][b] (3d ed. 1997) *citing In re Martin-Trigona,*, 737 F.2d 1254 (2d. Cir. 1984).

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 03-30668

Summary Calendar

CROMPTON MANUFACTURING COMPANY INC

Plaintiff - Appellee

v.

PLANT FAB INC; GARY VENTRELLA

Defendants - Appellants

Appeal from the United States District Court
for the Middle District of Louisiana, Baton Rouge
No. 02-CV-947

Before KING, Chief Judge, and DAVIS and PRADO, Circuit Judges.

PER CURIAM:******

Defendants-Appellants Plant Fab, Inc. and Gary Ventrella appeal the district court's order permanently enjoining them from further prosecution of their claims against Plaintiff-Appellee Crompton Manufacturing Company arising out of an accident in Baton Rouge, Louisiana. For the following reasons, we affirm.

I. FACTUAL AND PROCEDURAL HISTORY

In July 1993, a tanker truck exploded in Baton Rouge, Louisiana, spilling a hazardous mixture of chemicals. Crompton Manufacturing Company, Inc. - - then known as Uniroyal Chemical Company, Inc. - - brought suit against various defendants to recover clean-up costs it incurred related to the accident. Uniroyal Chem. Co. v. Deltech Corp., No. 93-CV-998 (M.D. La. June 23, 1997), vacated in part, 160 F.3d 238 (5th Cir. 1998), modified on reh'g, 160 F.3d 258 (5th Cir. 1999).[1] A federal jury apportioned fault for the accident

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****** Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

[1] Crompton is correct to note that many of the judicial proceedings referenced by Plant Fab and Ventrella are not in the record and that "[a] court of appeals will not ordinarily enlarge the record on appeal

among four potentially liable parties. Crompton was found to be faultless.

On July 6, 1994, Plant Fab, Inc. and Gary Ventrella filed suit in Louisiana state court against various defendants - - including Crompton - - for damage to their facility caused by the explosion.[2] See Plant Fab, Inc. v. Uniroyal Chem. Co., No. 26,042 (La. 18th Jud. Dist. Ct. filed July 6, 1994). Plant Fab and Ventrella settled their claims with all defendants save Crompton. Crompton removed the case to federal district court on October 7, 2002. The district court found that it did not have federal questions jurisdiction and that removal based on diversity was untimely, and, therefore, remanded the case to state court for lack of subject-matter jurisdiction.

Also on October 7, 2002, Crompton brought this suit in federal court against Plant Fab and Ventrella for declaratory and injunctive relief. See Crompton Mfg. Co. v. Plant Fab, Inc., No. 02-947-B-M2 (M.D. La. Mar. 12, 2003). On June 17, 2003, the district court, after finding that it had both federal-question and diversity jurisdiction over the suit, entered judgment in favor of Crompton. The district court ruled that Plant Fab and Ventrella were collaterally estopped by the jury's liability determinations in Uniroyal, in addition to the settlement agreement between Plant Fab, Ventrella, and the

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to include material not before the district court." Kemlon Prods. & Dev. Co. v. United States, 646 F.2d 223, 224 (5th Cir. 1981). We may, however, take judicial notice of relevant state and federal proceedings. See United States v. Verlinsky, 459 F.2d 1085, 1089 (5th Cir. 1972) (taking judicial notice of "[t]he records of the district and the court of appeals here involved"); Paul v. Dade County, 419 F.2d 10, 12 (5th Cir. 1969) (taking judicial notice of a prior state case, even though it "was not made part of the record ... on appeal").

[2] Plant Fab and Ventrella initially attempted to intervene in Uniroyal, but ultimately withdrew their motion to intervene and filed this separate suit.

Uniroyal defendants, from pursuing their claims against Crompton. Th16erefore, the district court permanently enjoined Plant Fab and Ventrella from continuing Plant Fab, their state-court suit. Plant Fab and Ventrella appeal the district court's decisions to this court.

II. DISCUSSION

A. Standard of Review

We review a district court's factual determinations for clear error and we review its legal conclusions de novo. Peaches Entm't Corp. v. Entm't Repertoire Assocs., Inc., 62 F.3d 690, 693 (5th Circ. 1995). In particular, "[t]he application of collateral estoppel is a question of law that we review de novo." United States v. Brackett, 113 F.3d 1396, 1398 (5th Cir. 1997).

A. Analysis

1. Rule 10 of the Federal Rules of Appellate Procedure

Crompton contends that we should dismiss this appeal because Plant Fab and Ventrella violated Rule 10(b) of the Federal Rules of Appellate Procedure by not providing this court with the entire transcript of proceedings before the district court. While an appellant is not always required to provide a complete transcript of district court proceedings, see FED. R. APP. P. 10(b), the appellant does have a duty to provide those portions that are necessary for a meaningful review. Birchler v. Gehl Co., 88 F.3d 518, 519-20 (7th Circ. 1996). Crompton alleges that the material provided by Plant Fab and Ventrella do not meet this requirement.

The record in this case is rather extraordinary, in that the only papers filed by Plant Fab and Ventrella with the district court were a

motion for a status conference and notice of appeal. In light of the dearth of written material in the record, it would have been helpful for Plant Fab and Ventrella to have included a transcript of all proceedings before the district court. Nevertheless, the record provided by Plant Fab and Ventrella, which included a transcript of the status conference, provides us with sufficient material to rule on at least some of the issues presented by Plant Fab and Ventrella. See id. at 520 (holding that an appellant's failure to comply with Rule 10(b) did not preclude the court from a meaningful review of the merits of the appeal). Accordingly, dismissal on this basis is not required. See Gulf Water Benefaction Co. v. Pub. Util. Comm'n, 674 F.2d 462, 465-66 (5th Cir. 1982) (holding that an appellant's failure to comply with Rule 10 did not mandate a dismissal of the appeal). We will, however, "necessarily limit the scope of our review to the available record." Boze' v. Branstetter, 912 F.2d 801, 803 n.1 (5th Cir. 1990).

Crompton also alleges that Plant Fab and Ventrella violated Rule 10(b)(3), which states that an appellant who does not order the entire transcript of the district court proceedings must "file a statement of the issues that the appellant intends to present on the appeal and must serve on the appellee a copy of both the order [placed with the court reporter for the partial transcript] and the statement [of issues]." According to Crompton, Plant Fab and Ventrella failed to provide Crompton with either a copy of the order or a statement of issues. Thus, Crompton urges this court to dismiss Plant Fab and Ventrella's appeal.

Crompton's assertion is well-taken; Plant Fab and Ventrella did apparently violate Rule 10(b). As we explained above, however, the materials provided by Appellants are sufficient for a review of at least some of the issues presented on appeal. In addition, Crompton has pointed to no portion of the transcript that it would have included had it been notified by Plant Fab and Ventrella that the entire transcript would not be made part of the record. Therefore, in this

case, Plant Fab and Ventrella's violation of Rule 10(b) was harmless. See RecoverEdge L.P. v. Pentecost, 44 F.3d 1284, 1290 (5th Cir. 1995). For this reason, we decline to exercise our discretion to dismiss Plant Fab and Ventrella's appeal for violation of Rule 10(b). See id.

2. Jurisdiction

The district court based its jurisdiction over this suit both on the diversity of the parties, see 28 U.S.C. § 1332 (2000), and on the All Writs Act, see 28 U.S.C. § 1651 (2000). Plant Fab and Ventrella contend that both of these determinations were wrong. According to Plant Fab and Ventrella, the district court could not have had diversity jurisdiction because the very same district court, in a case involving the same parties and the same incident, found that it did not have subject-matter jurisdiction and remanded the case to state court. In addition, Plant Fab and Ventrella ague that the district court did not have federal-question jurisdiction because the All Writs Act cannot provide the basis for such jurisdiction.

Section 1332 provides that "district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between ... citizens of different States." Crompton, in its amended complaint, alleged that the parties were diverse and that the amount in controversy exceeded $75,000. Thus, Crompton met its initial burden for establishing jurisdiction under § 1332. See Aetna Cas. & Sur. Co. v. Hillman, 796 F.2d 770, 775 (5th Cir. 1986) ("The party seeking to invoke the jurisdiction of the federal court has the burden of proving that jurisdiction exists."). On appeal, Plant Fab and Ventrella have not disputed the facts alleged in Crompton's complaint and have pointed to nothing in the record suggesting that Crompton's pleadings are erroneous. Indeed, Plant Fab and Ventrella never denied Crompton's allegations before the district court.

Furhtermore, our own search of the record on appeal has uncovered nothing that contradicts Crompton's allegations. Therefore, Crompton has met its burden of showing that the district court had diversity jurisdiction over this suit.

Still, Plant Fab and Ventrella contend that the district court's determination that it had jurisdiction must have been erroneous, since the court had previously remanded Plant Fab, which involved the same parties, for lack of subject-matter jurisdiction. The district court's conclusion in Plant Fab, however, is not inconsistent with the district court's conclusion that it had jurisdiction here.

The district court remanded Plant Fab to the state court because (1) the petition for removal on the basis of diversity of citizenship was untimely under 28 U.S.C. § 1446(b) (2000) and (2) the district court did not have federal-question jurisdiction under the All Writs Act. See Syngenta Crop Prot., Inc. v. Henson, 537 U.S. 28, 33 (2002) ("Because the All Writs Act does not confer jurisdiction on the federal cots, it cannot confer the original jurisdiction required to support removal pursuant to § 1441."). Thus, timeliness of the removal petition, rather than the parties' failure to meet the requirements of § 1332, prevented the district court from exercising jurisdiction over Plant Fab on the basis of diversity. Here, by contrast, there is no timeliness issue. Furthermore, the uncontradicted evidence shows that the parties are diverse and that the amount in controversy exceeds $75,000. Thus, we conclude that the district court had subject-matter jurisdiction based on 28 U.S.C. § 1332.[1]

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[1] Plant Fab and Venrella further argue that the district court should be found to lack jurisdiction because, otherwise, Crompton would be allowed to have its claims heard in federal court even though it did not timely remove the pending state-court suit. This argument is meritless. If the requirements of §1332 are met, the district court has subject-matter jurisdiction, and (of course) §1332 has not exception for cases where the party failed to timely remove a similar state-court

2. Full Faith and Credit and Collateral Estoppel

Plant Fab and Ventrella also argue that the district court erred by applying collateral estoppel to bar them from continuing their state-court suit against Crompton. First, Plant Fab and Ventrella contend that the district court violated the Full Faith and Credit Act, 28 U.S.C. § 1783 (2000), by applying collateral estoppel after the state court had denied Crompton's motion for summary judgment, which was based on Crompton's collateral estoppel theory. Second, Plant Fab and Ventrella maintain that the issues relied on by the district court in finding them collaterally estopped were not "fully and vigorously litigated" by the defendants in Uniroyal, as required by this circuit for application of collateral estoppel. See Gandy Nursery, Inc. v. United States, 318 F.3d 631, 639 (5th Cir. 2003).

On the record presented by Plant Fab and Ventrella, there is no indication that either of these issues was raised before the district court. In this circuit, we usually do not consider issues raised for the first time on appeal, absent "extraordinary circumstances." Vogel v. Veneman, 276 F.3d 729, 733 (5th Cir. 2002) (citation and internal quotation marks omitted). "Extraordinary circumstances exist when the issue involved is a pure question of law and miscarriage of justice would result form our failure to consider it." Coggin v. Longview Ind. Sch. Dist., 337 F.3d 459, 469 (5th Cir. 2003) (citation and internal quotation marks omitted). For example, we will consider an issue "when the asserted error is so obvious that the failure to consider it would result in a miscarriage of justice." Id. at 469-70 (5th Cir. 2003) (citation and internal quotation marks omitted). Because we do not find such extraordinary circumstances to be present here, we decline to address these issues.

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case.

III. CONCLUSION

For the foregoing reasons, we AFFIRM the judgment of the district court enjoining Plant Fab and Ventrella from continuing to prosecute Plant Fab, Inc. v. Uniroyal Chem. Co., No. 26,042 (La. 18th Jud. Dist. Ct. filed July 6, 1994).

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CROMPTON MANUFACTURING
COMPANY, INC. CIVIL ACTION NO. 02-947-B-M2

VERSUS

PLANT FAB, INC. AND GARY
VENTRELLA

PRELIMINARY INJUNCTION

For written reasons previously assigned:

IT IS HEREBY ORDERED that the motion for preliminary injunction filed by Crompton Manufacturing Company (formerly known as Uniroyal Chemical Company) is hereby granted upon the plaintiff posting a bond in the sum of One Thousand and No/100 Dollars ($1,000.00) and that Plant Fab, Inc. and Gary Ventrella, together with their officers, agents, servants, employees, attorneys, and persons in active concert or participation with them are enjoined from taking any steps in any forum to further or prosecute their claims against Crompton Manufacturing Company, Inc. or Uniroyal Chemical Company (now known as Crompton Manufacturing Company, Inc.) which were asserted (or could have been asserted) by them arising out of the transaction or occurrence at issue in the state court action entitled *Plant Fab, Inc. and Gary Ventrella v. Uniroyal Chemical Company, Inc, et. al.*, Suit No. 26,042, Division D, on the docket of the 18th Judicial District Court for the Parish of West Baton Rougie, State of Louisiana (hereinafter referred to as "the State Court Action") pending a final judgment on the merits of the instant action.

A copy of this order shall be mailed to counsel for all parties who shall have the responsibility of notifying their respective clients that the order has been issue.

Baton Rouge, Louisiana, April 2, 2003.

/s/ Frank J. Polozola
FRANK J. POLOZOLA, CHIEF JUDGE
MIDDLE DISTRICT OF LOUISIANA

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CROMPTON MANUFACTURING COMPANY, INC. CIVIL ACTION NO. 02-947-B-M2

VERSUS

PLANT FAB, INC. AND GARY VENTRELLA

RULING

Crompton Manufacturing Company, Inc., ("Crompton")[1] filed this suit[2] on October 7, 2002, seeking: (1) a declaratory judgment holding that the final judgment entered by this Court in *Uniroyal Chemical Company v. Deltech Corp., et. al.*, Civil Action No. 93-998 bars the claims of Plant Fab, Inc. ("Plant Fab") and Gary Ventrella in the matter entitled *Plant Fab, Inc. and Gary Ventrella v. Uniroyal Chemical Company, Inc., et. al.*, (hereinafter referred to as "the State Court Action");[3] and (2) "preliminary and thereafter permanent injunctive relief prohibiting, restraining, and enjoining Plant Fab, Inc., Gary Ventrella and their representatives from prosecuting against Uniroyal or Crompton any of the claims asserted" in the State Court Action in any forum.[4]

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[1] Crompton was formerly known as Uniroyal Chemical Company, Inc.

[2] This suit was originally filed on October 7, 2002. Plaintiff filed an amended complaint on October 8, 2002.

[3] The State Court Action was removed to this Court from the 18th Judicial District Court, Parish of West Baton Rouge, Louisiana, and docketed in this Court as Civil Action No. 02-944. This Court later remanded Civil Action No. 02-944 to state court for lack of subject matter jurisdiction.

[4] Rec. Doc. No. 3, First Amended Complaint.

This matter is now before the Court on Crompton's Motion for a Preliminary Injunction.[5] As noted earlier, Crompton seeks to enjoin the defendants from pursuing their claims against Crompton in the State Court Action. For reasons which follow, Crompton's Motion for a Preliminary Injunction is granted.[6]

I. Procedural History

On July 16, 1993, a tank truck exploded in West Baton Rouge Parish near the old Mississippi River Bridge, prompting a lawsuit entitled *Uniroyal Chemical Company v. Deltech Corp., et al*, Civil Action No. 93-988.[7] This suit was tried before a jury in federal court, and the trial lasted three and one-half weeks. The trial resulted in the jury returning the following verdict insofar as liability was concerned: Deltech Corporation ("Deltech") - 20%; Safeway Transportation, Inc. ("Safeway") - 70%; TMI Enterprise, Inc. ("TMI") - 10%; and Uniroyal - 0%. Thereafter, a final judgment was entered based on the jury's verdict.[8] Prior to the time the federal court trial began, Plant Fab and Gary Ventrella filed a motion to intervene in the suit. However, Plant Fab and Gary Ventrella later withdrew their motion to intervene.

On July 6, 1994, Plant Fab and Gary Ventrella filed the State Court Action against Uniroyal, Inc. (now "Crompton"), Deltech, U.S. Comex Corporation, Safeway and TMI claiming damages as a result of the 1993 explosion. In a September 28, 1998 document entitled "Receipt and Release of All Claims,"[9] Plant Fab and Gary Ventrella settled any and all claims they had against Safeway, TMI and Deltech

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[5] Rec. Doc. No. 5.

[6] The Court will order the parties to submit a proposed order for the Court to sign.

[7] This suit was filed on November 24, 1993.

[8] Rec. Doc. No. 3, Exhibit A, "Amended Judgment".

[9] Civil Action No. 02-944, Rec. Doc. No. 1, Exhibit C.

relating to or resulting form the 1993 tank truck explosion for a total of $500,000. The settlement paid to Plant Fab and GaryVentrella was based on the same percentages of fault that Safeway, TMI and Deltech were assigned by the jury in *Uniroyal Chemical Company v. Deltech Corp., et al* In other words, the jury verdict in the first federal suit formed the basis for this settlement.

On October 7, 2002, Crompton removed the State Court Action to this Court. On the same date, Crompton filed this suit for declaratory injunctive relief. Plant Fab and Gary Ventrella then filed a motion to remand their suit to state court. On February 28, 2003, the Court remanded the State Court Action to the 18th Judicial District Court, Parish of West Baton Rouge, State of Louisiana.[10]

II. Crompton's Motion for Preliminary Injunction

This matter is now before the Court on Crompton's Motic for a Preliminary Injunction. After careful consideration of the enti record, the Court finds that the plaintiff's request for a preliminary injunction should be granted. The Court's decision is based on the following reasons: (1) defendants are collaterally estopped[11] from bringing their claim against Crompton in the State Court Action; [12] (2) Plant Fab and Gary Ventrella's settlement agreement with

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[10] The remand was based on a recent United States Supreme Court decision entitled *Syngenta Crop Protection, Inc. v. Henson*, 123 S. Ct. 366, 154 L. Ed. 2d 368 (2002).

[11] The defendants rely upon *Landmark Land Co., Inc. v. Office of Thrift Supervision*, 990 F.2d 807 (5th Cir. 1993), and *Baby DollsTopless Saloons, Inc. v. City of Dallas*, 295 F.3d 471 (5th Cir. 2002) to support their argument that the Amended Judgment in *Uniroyal Chemical Company v. Deltech Corp., et al*, was modified and, therefore, without preclusive effect. These cases are factually and legally distinguishable from the case now pending before the Court.

[12] The fault for the 1993 tank truck explosion has already been fully litigated in this Court in *Uniroyal Chemical Company v. Deltech Corp., et al.*

Safeway, TMI and Deltech required each to pay a settlement in accordance with the jury's verdict in the first federal suit in return for a full release;[13] (3) under Louisiana Civil Code Articles 1803[14] and 1888[15], and the terms of the settlement agreement, any obligations with Uniroyal/Crompton owed Plant Fab and Gary Ventrella as a result of the 1993 tank truck explosion have been extinguished;[16] and (4) in the interest of equity, fair play and judicial economy, Plant Fab and Gary Ventrella should be enjoined from relitigating this 1993 accident under the law and the facts of this case.

In summary, the court finds that the Amended Judgment[17] rendered by the court in accordance with the jury's verdict in *Uniroyal Chemical Company v. Deltech Corp., et al*, Civil Action No. 93-998, the doctrine of collateral estoppel, the September 1998 release, the Louisiana Civil Code Articles on remission of debt, and equitable and judicial economy principles bar relitigation of fault for the 1993 explosion by Plant Fab and Gary Ventrella under the law and facts of this case.

Therefore:

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[13] Therefore, the remitted portion of any debt owed to Plant Fab and Gary Ventrella equals 100%.

[14] Louisiana Civil Code Article 1803 states in pertinent part, "Remission of debt by the obligee in favor of one obligor, or a transaction or compromise between the obligee and one obligor, benefits the other solidary obligors in the amount of the portion of that obligor."

[15] Louisiana Civil Code Article 1888 states in pertinent part, "A remission of debt by an obligee extinguishes the obligation."

[16] The Court's decision is further supported by the language of the release which requires Plant Fab and Gary Ventrella to defend and fully indemnify Safeway, TMI and Deltech for "any sums which may be sought... and which they might become obligated to pay to any other parties or persons... included but not limited to any claim for... indemnity... collateral estoppel, issue preclusion or otherwise... Arising out of the claims of GARY VENTRELLA or PLANT FAB, INC...." as a result of the tank truck explosion. Rec. Doc. No. 7, Exhibit C.

[17] Rec. Doc. No. 3, Exhibit A, "Amended Judgment".

IT IS ORDERED that Crompton's Motion for a Preliminary Injunction enjoining Plant Fab, Gary Ventrella and their representatives from prosecuting any claims in the state court suit entitled *Plant Fab, Inc. and Gary Ventrella v. Uniroyal Chemical Company, Inc., et.al.*, be and it is hereby granted.[18]

IT IS FURTHER ORDERED that the parties shall submit a proposed order for a preliminary injunction in accordance with this opinion agreed to as to form by all parties on or before March 17, 2003.[19]

IT IS FURTHER ORDERED that on or before March 17, 2003, the parties shall advise the Court whether the Preliminary Injunction can be converted to a Permanent Injunction without the further need of additional trial proceedings.

IT IS FURTHER ORDERED that on or before March 17, 2003, the parties shall set forth any additional issues that need to be resolved herein to bring this case to a final conclusion. The Court would consider a Rule 54(b) judgment on the preliminary and permanent injunction issues.

Baton Rouge, Louisiana, March 11, 2003.

/s/ Frank J. Polozola
FRANK J. POLOZOLA, CHIEF JUDGE
MIDDLE DISTRICT OF LOUISIANA

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[18] The Court has considered all of the contentions of the parties whether discussed herein or not.

[19] The defendants' rights of appeal shall be fully preserved.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 03-30668

CROMPTON MANUFACTURING COMPANY INC
Plaintiff-Appellee
v.

PLANT FAB INC; GARY VENTRELLA
Defendants – Appellants

Appeal from the United States District Court for the
Middle District of Louisiana, Baton Rouge

ON PETITION FOR REHEARING AND REHEARING EN BANC

(Opinion 3/2/04, 5 Cir., _____, _____ F.3d _____)

Before KING, Chief Judge, DAVIS, and PRADO, Circuit Judges.

PER CURIAM:

(X) The Petition for Rehearing is DENIED and no member of this panel nor judge in regular active service on the court having requested that the court be polled on Rehearing En Banc, (Fed.R.App.P. and 5th Cir.R. 35) the Petition for Rehearing En Banc is also DENIED.

( ) The Petition for Rehearing is DENIED and the court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service not having voted in favor, (Fed.R.App.P. and 5th Cir. R. 35) the Petition for Rehearing En Banc is also DENIED.

( ) A member of the court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor, Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ Carolyn Dineen King
United States Circuit Judge

U.S. Court of Appeals
FILED
March 31, 2004
Charles R. Fulbruge III
Clerk

CLERK'S NOTE:
SEE FRAP AND LOCAL
RULES 41 FOR STAY OF THE
MANDATE